

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Bro-Tech Corporation t/a Purolite and Teamsters
Local 107, a/w International Brotherhood of
Teamsters, AFL-CIO. Case 4-CA-23458**

April 27, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed on February 1, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 27, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-17846. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 24, 1995, the General Counsel filed a Motion for Summary Judgment. On March 27, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 17, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.¹ The Respondent does not offer to

¹ The Respondent's answer denies par. 4(a) of the complaint, which sets forth the appropriate unit, on the ground that the allegations therein constitute legal conclusions for which no response is necessary. We find that the Respondent's denial in this respect does not raise any litigable issue in this proceeding. Under the Board's Rules, the Respondent had the opportunity to litigate the unit issue in the representation proceeding. The Respondent, however, chose not to do so, and instead entered into a Stipulated Election Agreement which, inter alia, set forth the appropriate collective-bargaining unit. By entering into this stipulation, the Respondent agreed that the unit described therein was appropriate. Accordingly, we find that the appropriate unit is as stated in the complaint.

adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a facility in Philadelphia, Pennsylvania, has been engaged in the manufacture, marketing, and sale of ion exchange chemicals.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 17, 1992, the Union was certified on December 16, 1994,² as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time production, maintenance, warehouse, and laboratory employees, but excluding all other employees, including office clerical employees, guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About January 11, 1995, the Union, by letter, requested the Respondent to bargain, and, since about January 20, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 20, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate

² See 315 NLRB No. 151.

unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Bro-Tech Corporation t/a Purolite, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local 107, a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time production, maintenance, warehouse, and laboratory employees, but excluding all other employees, including office clerical employees, guards and supervisors as defined by the Act.

(b) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."³

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 27, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local 107, a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time production, maintenance, warehouse, and laboratory employees, but excluding all other employees, including office clerical employees, guards and supervisors as defined by the Act.

BRO-TECH CORPORATION T/A PUROLITE